



General Assembly

**Substitute Bill No. 707**

January Session, 2005

\* \_\_\_\_SB00707FIN\_\_041805\_\_ \*

**AN ACT CONCERNING A NURSING FACILITY USER FEE.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1       Section 1. (NEW) (*Effective from passage*) (a) As used in this section:
- 2       (1) "Commissioner" means the Commissioner of Social Services;
- 3       (2) "Federal financial participation matching funds" means all  
4 amounts due or paid to the state of Connecticut by the federal  
5 government as a result of nursing facility Medicaid payments funded  
6 by the user fees described in subsection (b) of this section;
- 7       (3) "Medicaid patient day" means a day of care provided to a patient  
8 in a nursing facility and billed to the Medicaid program;
- 9       (4) "Medicare program" includes fee-for-service Medicare and  
10 Medicare managed care;
- 11       (5) "Nursing facility" means a chronic and convalescent nursing  
12 home or a rest home with nursing supervision licensed by the  
13 Department of Public Health;
- 14       (6) "Patient day" means a day of care provided to a patient in a  
15 nursing facility and billed by the nursing facility, but does not include  
16 a patient day billed to the Medicare program or a patient day as used  
17 in subparagraph (B) of subdivision (1) of subsection (f) of this section;

18       (7) "Revenues" means amounts billed by nursing facilities for all  
19 room, board and inpatient and outpatient ancillary services, net of  
20 contractual allowances and bad debts.

21       (b) (1) The commissioner shall assess a user fee of approximately  
22 fourteen dollars per patient day on each nursing facility, except as  
23 otherwise provided in subdivision (1) of subsection (f) of this section.

24       (2) The commissioner shall impose the user fee assessment in a  
25 manner consistent with 42 CFR Part 433, Subpart B, and in no event  
26 shall any nursing facility be held harmless within the meaning of 42  
27 CFR 433.68(f).

28       (3) The amount of the user fee for the fiscal year beginning July 1,  
29 2005, or any part thereof, and for each succeeding fiscal year shall be  
30 determined by the commissioner as follows:

31       (A) The amount calculated pursuant to the provisions of  
32 subparagraph (B) of this subdivision minus the total user fees  
33 calculated in accordance with the provisions of subparagraph (C) of  
34 this subdivision and divided by the anticipated number of state-wide  
35 aggregate patient days, excluding patient days attributed to nursing  
36 facilities exempted from the user fee assessment pursuant to  
37 subdivision (1) of subsection (f) of this section, for the fiscal year  
38 ending June 30, 2006, determined on an annualized basis, if necessary,  
39 and each succeeding fiscal year, as applicable.

40       (B) The sum of anticipated state-wide aggregate revenues for all  
41 nursing facilities subject to the user fee assessment prescribed by this  
42 section, including revenues from additional per diem payments as  
43 provided in subsection (c) of this section, for the fiscal year ending  
44 June 30, 2006, as determined on an annualized basis, if necessary, and  
45 each succeeding fiscal year, as applicable, multiplied by six per cent.

46       (C) The user fee imposed on the nursing facilities specified in  
47 subparagraph (B) of subdivision (1) of subsection (f) of this section  
48 shall be determined in accordance with the requirements of said

49 subparagraph (B), using the anticipated number of applicable patient  
50 days for each such nursing facility for the fiscal year ending June 30,  
51 2006, as determined on an annualized basis, if necessary, and for each  
52 succeeding fiscal year.

53 (4) The sum of the state-wide aggregate user fees for each full fiscal  
54 year or part thereof shall equal, but shall not exceed, six per cent of  
55 state-wide aggregate revenues for all nursing facilities subject to the  
56 user fee assessment prescribed by this section for each such fiscal year  
57 or on an annualized basis. Not later than sixty days after the end of  
58 each fiscal year, the commissioner shall determine actual aggregate  
59 state-wide nursing facility revenues for all nursing facilities subject to  
60 the user fee assessment prescribed by this section, including revenues  
61 from additional per diem payments as provided in subsection (c) of  
62 this section, and shall adjust the user fee for that fiscal year as  
63 necessary to maintain such six per cent limitation. Not later than sixty  
64 days after determining the adjusted user fee, the commissioner shall  
65 refund any overpayments to nursing facilities or issue a supplemental  
66 user fee bill to nursing facilities.

67 (5) All amounts collected by the commissioner pursuant to this  
68 section and all federal financial participation matching funds, together  
69 with any interest and late fees thereon, shall be deposited in the  
70 nursing facility security account established pursuant to subsection (e)  
71 of this section. No appropriation, expenditure or withdrawal from the  
72 nursing facility security account shall be permitted except in  
73 accordance with this section.

74 (c) (1) All amounts in the nursing facility security account  
75 established pursuant to subsection (e) of this section shall be used as  
76 follows: The commissioner shall add approximately thirty-five dollars  
77 and thirty-four cents to the per diem Medicaid rate established for each  
78 nursing facility for the fiscal year beginning July 1, 2005, or upon such  
79 later date as the user fee may become effective, and for each  
80 succeeding fiscal year. This additional per diem payment shall  
81 reimburse nursing facilities for the cost of user fees related to Medicaid

82 patient days and in part for Medicaid payments in prior years that  
83 were insufficient to reimburse Medicaid allowable costs due to an  
84 inflation index that did not reflect actual cost increases, rate increase  
85 limitations set forth in subdivision (4) of subsection (f) of section 17b-  
86 340 of the general statutes, and other factors. The per diem Medicaid  
87 rate established for each nursing facility for each such fiscal year shall  
88 comply with the requirements of subsections (a), (e) and (f) of section  
89 17b-340 of the general statutes and the regulations adopted pursuant to  
90 subsection (b) of said section 17b-340, provided no rate limitation set  
91 forth in section 17b-340 of the general statutes, shall apply to the  
92 additional per diem payment made pursuant to this subsection.

93 (2) The exact amount of the additional per diem payment made  
94 pursuant to subdivision (1) of this subsection shall be determined by  
95 the commissioner as follows: The anticipated amount of state-wide  
96 aggregate user fees as established by subdivision (3) of subsection (b)  
97 of this section to be paid by nursing facilities during the fiscal year  
98 beginning July 1, 2005, or any part thereof, on an annualized basis, and  
99 each succeeding fiscal year, shall be multiplied by two and divided by  
100 the anticipated state-wide aggregate number of Medicaid patient days  
101 for the same period. Not later than sixty days after the end of each  
102 fiscal year, the commissioner shall determine the actual user fees for  
103 that fiscal year as set forth in subdivision (4) of subsection (b) of this  
104 section, divided by the actual number of state-wide aggregate  
105 Medicaid patient days, and shall adjust the additional per diem  
106 payment for that fiscal year as necessary. The commissioner shall make  
107 a supplemental payment to nursing facilities or recoup any  
108 overpayments not later than sixty days after determining the adjusted  
109 per diem payment. In calculating the additional per diem payment, the  
110 commissioner may deduct one-tenth of one per cent from the  
111 aggregate state-wide user fees prior to calculating the per diem  
112 amount. Such deduction shall be used to fund administrative costs  
113 incurred by the Department of Social Services in implementing the  
114 requirements of this section.

115 (3) For the fiscal year beginning July 1, 2006, all federal financial

116 participation matching funds included in the additional per diem  
117 payments set forth in subdivision (2) of this subsection that exceed  
118 such funds included in such payments for the fiscal year beginning  
119 July 1, 2005, as determined on an annualized basis, if necessary, shall  
120 be designated to enhance wages, benefits and staffing in nursing  
121 facilities.

122 (d) (1) All user fees paid by nursing facilities shall be an allowable  
123 cost for Medicaid rate-setting purposes.

124 (2) User fees shall be calculated monthly by each nursing facility by  
125 multiplying the amount of the user fee times such facility's number of  
126 patient days for that month. The user fees shall be payable to the  
127 nursing facility security account no later than the last day of the month  
128 following the month for which the user fees are calculated.

129 (3) The commissioner shall prepare forms for nursing facilities to  
130 use in reporting and calculating the user fees.

131 (4) The commissioner may conduct audits of nursing facility user  
132 fee payments for the purpose of determining whether the nursing  
133 facility has correctly computed the number of patient days, provided  
134 no such audit shall review any period of time prior to July 1, 2005, or  
135 more than three years prior to the beginning date of such audit.

136 (5) The commissioner may charge interest on any unpaid user fees  
137 at a rate not to exceed the then current rate charged on deficiency  
138 assessments pursuant to subsection (b) of section 12-415 of the general  
139 statutes.

140 (e) (1) There is established a nursing facility security account which  
141 shall be a separate nonlapsing account within the General Fund. The  
142 account may contain funds deposited pursuant to subdivision (5) of  
143 subsection (b) of this section and any other moneys required by law to  
144 be deposited in the account. The moneys in said account shall be used  
145 by the commissioner to make additional per diem payments to nursing  
146 facilities pursuant to subsection (c) of this section. Expenditures from

147 said account shall not be considered general budget expenditures, as  
148 defined pursuant to section 2-33a of the general statutes, as amended  
149 by this act, for the current fiscal year for the purposes of determining  
150 general budget expenditures for the ensuing fiscal year.

151 (2) The Treasurer shall apply the available resources of the nursing  
152 facility security account monthly, beginning with the third month after  
153 user fees are first paid into the account, to reimburse the Department  
154 of Social Services for the additional per diem payments to nursing  
155 facilities pursuant to subsection (c) of this section.

156 (f) (1) Not later than July 1, 2005, the commissioner shall seek  
157 approval from the Centers for Medicare and Medicaid Services for,  
158 and shall file a State Medicaid Plan amendment regarding, the user fee  
159 and additional per diem payments as set forth in this section. The  
160 request for approval shall include a request for a waiver of federal  
161 requirements for uniform and broad-based user fees in accordance  
162 with 42 CFR 433.68, to (A) exempt from the user fee assessment  
163 prescribed by this section any nursing facility owned by an entity that  
164 provides continuing care in exchange for a transfer of assets or an  
165 entrance fee in addition to or in lieu of periodic payments, regardless  
166 of whether such nursing facility participates in the Medicaid program;  
167 and (B) impose a user fee in an amount less than the fee determined  
168 pursuant to subsection (b) of this section on (i) any nursing facility that  
169 bills Medicaid patient days to the Medicaid program of another state  
170 when such days constitute twenty-five per cent or more of such  
171 facility's total patient days, including Medicare patient days, and (ii)  
172 the minimum number of nursing facilities having the highest number  
173 of total patient days, including Medicare patient days, as necessary to  
174 meet the requirements of 42 CFR 433.68(e)(2).

175 (2) If the Centers for Medicare and Medicaid Services does not  
176 approve a waiver exempting the nursing facilities described in  
177 subparagraph (A) of subdivision (1) of this subsection, the  
178 commissioner shall withdraw such plan amendment, cease to seek  
179 approval for the user fee and additional per diem payments and

180 refrain from imposition or collection of the user fee.

181       (3) The user fee prescribed by subsection (b) of this section and the  
182 additional per diem payment made pursuant to subsection (c) of this  
183 section shall be effective retroactively, if necessary, as of the first day of  
184 the calendar quarter in which the commissioner files the request for  
185 approval and State Medicaid Plan amendment pursuant to subdivision  
186 (1) of this subsection. The commissioner shall publish, not later than  
187 June 30, 2005, notice of the anticipated rate changes pursuant to this  
188 section, as required by 42 USC 1396a(a)(13)(A) and 42 CFR 447.205.  
189 The user fee set forth in subsection (b) of this section shall be  
190 implemented on the first day of the month following the month in  
191 which approval pursuant to subdivision (1) of this subsection is  
192 received. The additional per diem payments set forth in subsection (c)  
193 of this section shall be made beginning in the first month following the  
194 month in which such approval is received.

195       (g) The commissioner shall publish an annual accounting of  
196 deposits into and allocation from the nursing facility security account  
197 and the use of such allocations.

198       (h) Notwithstanding the provisions of this section, collection of the  
199 user fee shall terminate upon repeal of the federal law or laws allowing  
200 federal matching funds to be paid to the state in connection with  
201 expenditures by the state for the additional per diem payment set forth  
202 in subsection (c) of this section. Any balance remaining in or due to the  
203 nursing facility security account upon such termination shall be paid  
204 to nursing facilities on a pro rata basis according to the user fees paid  
205 by each such facility.

206       Sec. 2. Section 2-33a of the general statutes is repealed and the  
207 following is substituted in lieu thereof (*Effective July 1, 2005*):

208       The General Assembly shall not authorize an increase in general  
209 budget expenditures for any fiscal year above the amount of general  
210 budget expenditures authorized for the previous fiscal year by a  
211 percentage which exceeds the greater of the percentage increase in

212 personal income or the percentage increase in inflation, unless the  
213 Governor declares an emergency or the existence of extraordinary  
214 circumstances and at least three-fifths of the members of each house of  
215 the General Assembly vote to exceed such limit for the purposes of  
216 such emergency or extraordinary circumstances. Any such declaration  
217 shall specify the nature of such emergency or circumstances and may  
218 provide that such proposed additional expenditures shall not be  
219 considered general budget expenditures for the current fiscal year for  
220 the purposes of determining general budget expenditures for the  
221 ensuing fiscal year and any act of the General Assembly authorizing  
222 such expenditures may contain such provision. As used in this section,  
223 "increase in personal income" means the average of the annual increase  
224 in personal income in the state for each of the preceding five years,  
225 according to United States Bureau of Economic Analysis data;  
226 "increase in inflation" means the increase in the consumer price index  
227 for urban consumers during the preceding twelve-month period,  
228 according to United States Bureau of Labor Statistics data; and "general  
229 budget expenditures" means expenditures from appropriated funds  
230 authorized by public or special act of the General Assembly, provided  
231 (1) general budget expenditures shall not include expenditures for  
232 payment of the principal of and interest on bonds, notes or other  
233 evidences of indebtedness, expenditures pursuant to section 4-30a,  
234 payments from the nursing facility security account pursuant to  
235 section 1 of this act, or current or increased expenditures for statutory  
236 grants to distressed municipalities, provided such grants are in effect  
237 on July 1, 1991, and (2) expenditures for the implementation of federal  
238 mandates or court orders shall not be considered general budget  
239 expenditures for the first fiscal year in which such expenditures are  
240 authorized, but shall be considered general budget expenditures for  
241 such year for the purposes of determining general budget  
242 expenditures for the ensuing fiscal year. As used in this section,  
243 "federal mandates" means those programs or services in which the  
244 state must participate, or in which the state participated on July 1,  
245 1991, and in which the state must meet federal entitlement and  
246 eligibility criteria in order to receive federal reimbursement, provided



This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	New section
Sec. 2	<i>July 1, 2005</i>	2-33a

<b>PH</b>	<i>Joint Favorable Subst. C/R</i>	HS
<b>HS</b>	<i>Joint Favorable C/R</i>	FIN
<b>FIN</b>	<i>Joint Favorable</i>	